



November 16, 2004

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: CG Docket 02-278

To the Honorable Chairman Michael Powell and the Federal Communications Commissioners:

I write to you today to publicly comment about CG Docket No. 02-278 concerning the American Teleservices Association's (ATA's) Petition for Declaratory Ruling. My company is a full service agency that conducts fundraising campaigns for nonprofit organizations across the nation, including Special Olympics, Mothers Against Drunk Driving (MADD), Children's Wish Foundation, the Multiple Sclerosis Association of America, and over 100 others. We raise tens of millions of dollars every year for these wonderful charities, primarily through telephone fundraising campaigns.

It is the position of our company that we support the ATA's Petition for Declaratory Ruling in the issue concerning the New Jersey Consumer Fraud Act for a number of reasons. Those reasons are as follows:

1. New Jersey's rules apply do-not-call requests to the call center that is conducting calls for a nonprofit, which we find particularly unfair. As a call center that makes fundraising calls for many charities, we hold that it both violates existing FCC rules and is grossly unfair to allow a residential telephone subscriber to be able to be placed on a do-not-call list for multiple (in our case, over 100) charities based on a call made for one of them. In other words, it is patently unfair and in violation of existing rules to violate the protected speech of a charity (making telephonic solicitations) based on a consumer request made to a completely unrelated nonprofit organization. The US Supreme Court has held in four cases since 1980, and most recently in 2003 (*Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980); *Secretary of State of Maryland v. J.H. Munson Company, Inc.*, 467 U.S. 947 (1984); *Riley v. National Federation of the Blind*, 487 U.S. 781 (1988), and *Illinois ex rel. Madigan, Attorney General of Illinois v. Telemarketing Associates, Inc.* (2003) that charities enjoy protected free speech, and the New Jersey act fails to respect those rights.
2. We hold that New Jersey is attempting to implement rules that are more restrictive than the federal regulations, which is an obstacle to the Commission's efforts to create a uniform national system of telemarketing rules. Allowing these rules to stand would be a dangerous precedent for the charity organizations whom we and others in the telefundraising industry serve. That precedent would lead other states to also impose more stringent rules, which would make the cost of fundraising higher for charities—a situation that can benefit no one.
3. From our position as an agency that enables some of America's finest charities and nonprofits to carry out their missions, we find it most egregious that New Jersey is attempting to place increased restrictions on the protected speech rights of charities and nonprofits. By increasing the costs of doing business in the state of New Jersey, the state is,

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*de facto*, taking away revenues from charities that operate both in the state and from national organizations that depend on monies raised in the state.

4. The Commission published its revised rules regarding the implementation of the Telephone Consumers Protection Act of 1991 on July 25, 2003. Those rules state that more restrictive state regulations on the industry would “almost certainly be preempted”. Clearly, New Jersey is implementing rules that are more restrictive than the Commission’s rules. We implore the Commission to follow through with the position that it can and shall preempt more restrictive state regulations.

I appreciate your time and consideration, and urge the Commission to rule in favor of the ATA’s Petition for Declaratory Ruling in this issue.

Sincerely,

John C. Braune  
President and CEO